
(2006) 12 DEL CK 0064
In the Delhi High Court
Case No : Criminal A. 539 of 1998

Mukesh Kumar

APPELLANT

Vs

State of N.C.T.

RESPONDENT

Date of Decision : 04-12-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2006) 12 DEL CK 0064

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Amit Bhanot, for the Appellant; V.K. Malik, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The Trial Court sentenced the accused to undergo rigorous imprisonment for five years and to pay a fine in the sum of Rs. 5,000/-, in default of payment of fine he was to further undergo rigorous imprisonment for one year for the offence u/s 307 IPC. Complainant Hari Singh and his wife Savitri used to reside in Harsh Vihar. Appellant was Dharam Bhai of Savitri. Appellant started living with Hari Singh and his wife Savitri for a period of 8/9 months prior to this incident. Hari Singh used to eke out livelihood by selling milk and he employed the appellant as a helper. Hari Singh received complaints from his customers that appellant used to mix water in the milk. He desired that he should leave the job but his wife wanted to retain him. There used to be frequent quarrels between the couple. On 21.05.1989 Hari Singh asked the appellant to quit. Hari Singh and his wife exchanged hot words. During the night intervening 21.05.1989 / 22.05.1989 appellant was sleeping outside his house near the buffaloes. During mid-night at about 1.15 AM, Mukesh came to his cot, caught hold of the neck of Hari Singh, tried to strangle it and plunged some sharp edged iron weapon in his neck. Hari Singh raised an alarm. The appellant released him instantaneously and took to his heels. His wife was sleeping on the roof. She along with Ved Prakash came to the spot. Many other people gathered

there and took him to the hospital. Statement of Hari Singh was recorded at about 3.00 AM.

2. I have heard the counsel for the parties. The learned Counsel for the appellant vehemently argued that the entire case of the prosecution hinges upon the testimony of Hari Singh only. The same is corroborated neither by Savitri, his wife nor neighbour Ved Prakash.

3. This argument is vulnerable to refutation. PW4 has clearly stated that his wife Savitri, who was cited as a witness in this case has expired about five years ago i.e. one year after the occurrence. Secondly, Ved Prakash is not a material witness. He is not an eye witness. The law does not strike a snap in convicting the accused on the basis of a single witness. In Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , it was held:

Even if the case against the accused hangs on the evidence of a single eye-witness it may be enough to sustain the conviction given on sterling testimony of a competent, honest man, although as a rule of prudence courts call for corroboration. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs.

This view was also taken in Chacko @ Aniyar and Ors. v. State of Kerala 2004 II AD (S.C.) 136; Amita, Amrit Lal v. State of M.P. 2004 III AD (S.C.) 497; Yakooob Ismail Bhai v. State of Gujarat 2004 VIII A.D. (S.C.) 465; State of Maharashtra v. Man Singh 2005 SCC 657 and Seeman @ Veeranam Vs. State, by Inspector of Police, .

4. The second submission made by the learned Counsel for the appellant was that the fact as to when the accused was found to be fit for making a statement is folded in mist and the position does not begin to jell. Dr. B.P. Arneja, CMO PW6 deposed that he had mentioned the date of arrival of the patient as 1.55 AM at five places encircled red and marked as A, B, C, D and E. As per his endorsement i.e. fit for statement, he inadvertently gave the time as 1.15 AM instead of 2.15 AM. On the other hand, Dr. Sanjay Gupta, PW8 stated that on 22.05.1989, patient Hari Singh, who was medically examined by Dr. B.P. Arneja vide MLC Ex. PW2/A was referred to him by the CMO with a stab injury on his neck. In his cross-examination, he stated that according to the injury sustained by patient Hari Singh, his opinion was that he must not be able to speak soon after the occurrence. He stated that as per discharge summary, the patient was discharged on 21.07.1989 but it mentions the admission dated as 14.07.1989.

5. Although, there are above said contradictions, yet, I am unable to find out as to how do these create propitious conditions for the appellant. These contradictions stand explained to the satisfaction of this Court. Moreover, the injured Hari Singh stated that immediately after the occurrence, he fell unconscious but regained consciousness at the time of his admission in the hospital. He admitted that he was not able to speak and answers to many questions were given by writing on a paper. He admitted that he was operated

upon in the hospital on the same day. Under these circumstances, I see no force in these arguments. The Explanations given by the doctor, the injured etc. go a long way to lull court's doubts and suspicions.

6. No other point was urged before me. However, the following points are noteworthy:

(a) The counsel for the appellant admitted that the appellant was involved in this case due to enmity. It must be understood that enmity card has a double edged sword which can cut both the sides. It is easy to cull out the motive as both the parties were at loggerheads. It is apparent that appellant was annoyed because he was asked to leave the job and house of the injured.

(b) The evidence on the record clearly goes to show that Hari Singh received dangerous injuries. The statement made by PW8 is reproduced as hereunder:

I found the patient had stab injury on his neck just on the right side of his midline. There was bleeding from the mouth and the patient was unable to speak. There was surgical emphysema around the neck wound. I advised the x-ray of chest to be taken of the patient. Thereafter, I saw the patient on the same day at about 5 pm and I operated upon the patient and my operative findings are : there was a complete tear in the trachea just below the cricoids extending from anterior lateral and right posterior wall involving 2/3rd of the trachea. There was a tear in the esophagus phase. There was a cut in the right lobe of the thyroid land. On the basis of these injuries, which have been recorded in the case-sheet, which has been brought by the record clerk of the hospital and shown to me, I gave my opinion regarding the nature of injury suffered by Hari Singh on 17.08.1989 and gave the opinion as "dangerous".

(c) Although, the counsel for the appellant has pointed out some contradictions in dates of admission and discharge of the injured from the hospital, yet, it stands established beyond all reasonable doubt that Hari Singh remained admitted in the hospital from 22.05.1989 to 21.07.1989 i.e. for two months. Shorn of few minor flaws, the evidence produced by prosecution is impeccable.

7. Now I advert to the point of sentence. The accused has already undergone sentence up to the period of two years, six months and 25 days including remission. He is still required to serve another two years, five months and five days and if fine is not paid, in that eventuality three years, five months and five days. The learned Counsel for the appellant also pointed out that accused is the only bread winner of his four children aged about 9, 7, 5 and 3 years. He has got an ailing mother to look after. I am of the considered view that the Trial Court has already taken the lenient view against the appellant. In State of Madhya Pradesh Vs. Ghanshyam Singh, it was held that long pendency of matter cannot by itself justify a lesser sentence.

8. In the result, the appeal is dismissed. Appellant is present in the court. He be taken into judicial custody to serve out the remaining sentence. Copy of this

judgment be furnished to him forthwith. Lower Court record with copy of this judgment be sent back. I appreciate the efforts taken by Mr. Amit Bhanot and fix his fees as Rs. 5,000/- to be paid by the State within six weeks from today.